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Culture

Is Your Employer Stealing From You?

Millions of workers lose billions in stolen wages every year—nearly as much as all other property theft.

BY LUKE DARBY

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Since assuming office in Philadelphia last year, Larry Krasner has earned a national reputation as a radical new kind of district attorney. He's pushed the sort of criminal justice reform that typically comes from activists or public defenders, like ordering prosecutors to stop pursuing criminal charges for marijuana possession, or directing them to no longer seek cash bail for low-level offenses. Last October, he took another bold step: He created a task force focused on crimes against workers.

One of the primary crimes this task force will focus on is wage theft. At the absolute simplest, wage theft is as it sounds—a worker doesn't get fully paid for the work they've done. Often employers pull this off by paying for less than the number of hours worked, not paying for legally required overtime, or stealing tips. That's money that workers are legally entitled to and that their bosses find some way of pocketing.

Wage theft isn't one of the crimes most prosecutors and politicians refer to when they talk about getting "tough on crime," but it represents a massive chunk of all theft committed in the U.S. A 2017 study by the Economic Policy Institute (EPI) found that in the ten most populous states, an estimated 2.4 million people lose a combined $8 billion in income every year to theft by their employers. That's nearly half as much as all other property theft *combined* last year—$16.4 billion according to the FBI. And again, EPI's findings are only for ten states. According to the institute, the typical worker victimized by minimum-wage violations is underpaid by $64 per week, totaling $3,300 per year. If its figures are representative of a national phenomenon, then EPI estimates that the yearly total for American wage theft is closer to $15 billion.

There are some overt ways that employers rob their workers, like taking money directly out of their paychecks, but wage theft can take more complicated and subtler forms. Deliberately mislabeling workers as independent contractors in order to avoid paying higher wages for the same responsibilities as regular employees, for example, or asking employees to work while off the clock, or denying meal breaks, all technically fall under wage theft. Amazon, for instance, is currently being sued for not paying its employees for the amount of time they spend going through lengthy security checkpoints when they arrive at and leave work. It's hard to mount civil lawsuits against employers who violate minimum-wage laws, because typically the victims of these crimes don't have the time or resources to fight for their lost wages. And last year's Supreme Court decision in *Epic Systems Corp. v. Lewis*, which ruled that it's legal to require employees to sign away their rights to join class-action lawsuits, makes going after employers for wage theft much more difficult.

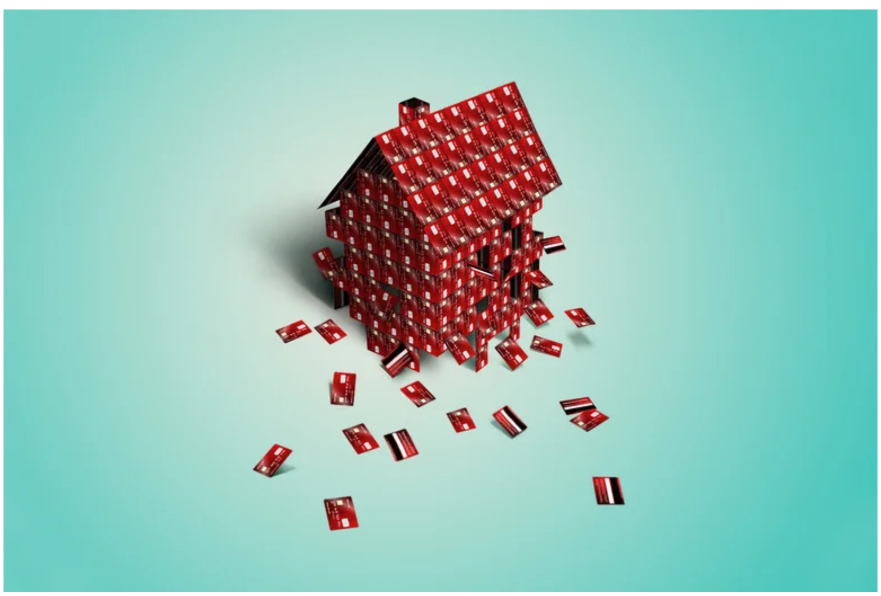
As author Kim Bobo explains in her book *Wage Theft in America*, the people affected by wage theft are spread across a

wide variety of industries, working in construction, nursing homes, garment factories, farms, poultry-processing plants, restaurants, landscaping, and more. But more professional workers are at risk, too, like nurses, pharmaceutical sales reps, and financial advisers. Freelancers are also especially susceptible. A 2018 report by Good Jobs First found that the overwhelming majority of companies caught committing wage theft are "the giant companies included in the Fortune 500, the Fortune Global 500 and the Forbes list of the largest privately held firms." That includes Walmart, FedEx, Bank of America, Wells Fargo, JPMorgan Chase, and State Farm Insurance.

Typically, enforcement of wage theft laws falls to the Department of Labor, which earlier this year won an almost $130,000 judgment against a Virginia home-health-care agency for deliberately misclassifying employees as independent contractors—and in that case the owner of the company was found personally liable for repaying wages. In 2018, the Department of Labor reportedly helped return a record-setting $308 million to workers, which is a huge win but still a drop in the $8 billion bucket.

Some cities and states are stepping in to try to fill the gap left by the Department of Labor. Just in the past seven years, El Paso and Minneapolis became the first cities to successfully indict employers for wage theft. And in 2015 the owner of several Papa John's franchises in New York City was sentenced to 60 days in jail for not paying his employees minimum wage or overtime.

These cases are extremely rare, though. And the stakes aren't high enough to dissuade employers looking to cut corners. That's what makes Krasner's task force dedicated to crimes against workers potentially revolutionary. As long as district attorneys and prosecutors don't treat wage theft like the crime that by all legal definitions it is, employers will keep doing it. The payoff—countless hours of free labor—is too tempting for them to not reach for it.



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